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In re Application of
NISHIKAWA, Kazuo, et al.
Application No.: 10/510,210
PCT No.: PCT/IB03/01250
Int. Filing Date: 07 April 2003
Priority Date: 05 April 2002
Attorney Docket No.: 4978-0101PUS1
For: METHOD OF ESTIMATING
ELIMINATION OF MICROORGANISMS
AND APPARATUS FOR ESTIMATING
ELIMINATION OF MICROORGANISMS

DECISION ON
PETITION UNDER
37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition Under 37 CFR 1.47(A)," filed in the United States Patent and Trademark Office (USPTO) on 19 May 2006.

BACKGROUND

On 20 March 2006, the Office mailed Decision On Petition Under 37 CFR 1.47(a), dismissing applicants' petition without prejudice.

On 19 May 2006, applicants submitted a renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign after being presented with the application papers or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1) and (4) were previously satisfied.

Item (2) has not been satisfied. Applicants requested that Mr. Aoki sign a declaration by sending messages through his place of employment. A refusal by conduct requires presentation with a complete copy of the application papers, including the declaration and a subsequent refusal. MPEP 409.03(d). Applicants indicate only that the declaration and assignment documents were submitted. These documents do not constitute a complete copy of the application papers.

Further, applicants have not established that the proper papers were received by Mr. Aoki. Applicants indicate that Mr. Aoki is sick and is not at work. Ordinarily, the application papers should be sent to the last known residence of the inventor. Mr. Aoki's employer appears to be cooperating, so Mr. Aoki's employer could present a complete copy of the application papers to the inventor and provide the necessary firsthand declaration and supporting documentation.

As for Mr. Aoki's health, the USPTO does not require a medical certificate of incapacity. See MPEP 409.01(b). If someone or multiple people are empowered under law to act as Mr. Aoki's legal representative, that person or people may sign the declaration on his behalf, indicate that he, she or they are the legal representative, state their addresses, citizenships, mailing addresses and the information that the inventor would be required to state. See 37 CFR 1.497(a)-(b). A relative who is not his legal representative would not be sufficient. If Mr. Aoki is not legally incapacitated, he must sign. As indicated above, if Mr. Aoki were presented with a complete copy of the application papers and the declaration was not signed and returned within a reasonable period of time, his conduct can be construed as a refusal to sign.

Item (3) has not been satisfied. Applicants have supplied a business address for Mr. Aoki. Ordinarily, the last known address of the inventor is the last known residence. MPEP 409.03(e). Applicants do not have a home address for Mr. Aoki, but applicants have not indicated that Mr. Aoki customarily receives his mail at the business address. Applicants have not demonstrated a diligent effort to locate a home address for Mr. Aoki., such as copies of internet searches.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a). No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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